



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-073/C-570-074]

Common Alloy Aluminum Sheet from the People's Republic of China; Antidumping and Countervailing Duty Orders: Notice of Covered Merchandise Referral

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Pursuant to the Enforce and Protect Act of 2015 (EAPA), the Department of Commerce (Commerce) received a covered merchandise referral from U.S. Customs and Border Protection (CBP) in connection with a CBP EAPA investigation concerning the antidumping and countervailing duty (AD/CVD) orders on common alloy aluminum sheet from the People's Republic of China. In accordance with the EAPA, Commerce intends to determine whether the merchandise subject to the referral is covered by the scope of the orders and promptly to transmit its determination to CBP. Commerce is providing notice of the referral and inviting participation from interested parties.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Preston Cox or Yang Jin Chun, AD/CVD Operations Office VI, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5041 or (202) 482-5760, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 2016, the Trade Facilitation and Trade Enforcement Act of 2015 was signed into law, which contains Title IV-Prevention of Evasion of Antidumping and Countervailing Duty Orders (short title "Enforce and Protect Act of 2015" or "EAPA") (Pub. L. 114-125, 130 Stat. 122, 155, Feb. 24, 2016). Effective August 22, 2016, section 421 of the

EAPA added section 517 to the Tariff Act of 1930, as amended (the Act), which establishes a formal process for CBP to investigate allegations of the evasion of AD/CVD orders. Section 517(b)(4)(A) of the Act provides a procedure by which if, during the course of an EAPA investigation, CBP is unable to determine whether the merchandise at issue is covered merchandise within the meaning of section 517(a)(3) of the Act, it shall refer the matter to Commerce to make such a determination. Section 517(a)(3) of the Act defines covered merchandise as merchandise that is subject to an antidumping duty order issued under section 736 of the Act or a countervailing duty order issued under section 706 of the Act. Section 517(b)(4)(B) of the Act states that Commerce, after receiving a covered merchandise referral from CBP, shall determine whether the merchandise is covered merchandise and promptly transmit its determination to CBP. The Act does not establish a deadline within which Commerce must issue its determination.

On May 13, 2021, Commerce received a covered merchandise referral from CBP regarding CBP EAPA Investigation No. 7469¹ which concerns the AD and CVD orders on common alloy aluminum sheet from the People's Republic of China (China).² CBP explained that Texarkana Aluminum, Inc. (TKA) alleged that AA Metals, Inc. (AA Metals) imported Chinese-origin aluminum sheet into the United States that was transshipped through Turkey after minor processing, and falsely declared it as Turkish-origin.³ CBP stated that TKA alleged that AA Metals imported Chinese aluminum sheet that was re-rolled to a thinner thickness in Turkey by Turkish producers PMS Metal Profil Alüminyum San. ve Tic. A.Ş. (PMS) and Teknik Alüminyum Sanayi A.Ş. (Teknik).⁴ CBP's Office of Trade initiated an EAPA investigation on

¹ See Letter from CBP, "Re: Covered Merchandise Referral Request for EAPA Investigation 7469, Imported by AA Metals, Inc.: Antidumping and Countervailing Duty Orders on Common Alloy Aluminum Sheet from the People's Republic of China," dated May 13, 2021 (CBP's EAPA 7469 Letter). Commerce intends to make available this document and any supporting documents on Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS) within five days of publication of this notice.

² See *Common Alloy Aluminum Sheet from the People's Republic of China: Antidumping Duty Order*, 84 FR 2813 (February 8, 2019); *Common Alloy Aluminum Sheet from the People's Republic of China: Countervailing Duty Order*, 84 FR 2157 (February 6, 2019) (collectively, the *Orders*).

³ See CBP's EAPA 7469 Letter at 1-2.

⁴ *Id.* at 2.

June 30, 2020, based on the evidence in the allegation submitted by TKA that reasonably suggested that AA Metals entered aluminum sheet into the customs territory of the United States by means of evasion.

CBP informed Commerce that CBP is unable to determine whether the merchandise at issue is covered merchandise due to the third country processing in two scenarios: 1) Chinese-origin aluminum sheet of a thickness a little greater than covered by the scope re-rolled in Turkey to a thickness covered by the scope; and 2) Chinese-origin aluminum sheet of a thickness covered by the scope re-rolled in Turkey to a thickness covered by the scope. CBP further informed Commerce that AA Metals argues that the Chinese-origin aluminum sheet further processed in Turkey is not subject to the *Orders*.⁵

Notification to Interested Parties

Commerce is hereby notifying interested parties that it has received the covered merchandise referral referenced above, it will begin new segments of the proceedings, and intends to issue a determination regarding whether the merchandise subject to the referral is covered merchandise within the meaning of section 517(a)(3) of the Act. Additionally, Commerce intends to provide interested parties with the opportunity to participate in these segments of the proceedings, including through the submission of comments, and, if appropriate, new factual information and verification. Specifically, Commerce will notify parties on the segment-specific service lists for these segments of the proceedings of a schedule for comments. In addition, Commerce may request factual information from any person to assist in making its determination and may verify submissions of factual information, if Commerce determines that such verification is appropriate. Commerce intends to issue a final determination within 120 days of the publication of this notice (this deadline may be extended if it is not practicable to complete the final determination within 120 days) and will promptly transmit its final determination to CBP in accordance with section 517(b)(4)(B) of the Act.

⁵ *Id.* at 2-3.

Commerce may consider conducting a separate anti-circumvention inquiry regarding the merchandise described in CBP's covered merchandise referral, if parties submit the necessary information addressing the criteria for an anti-circumvention inquiry, in accordance with section 781 of the Act. Interested parties are requested to file such comments and information onto the record of this proceeding within 30 days of the publication of this notice in the *Federal Register*.

Parties are also hereby notified that this may be the only notice that Commerce intends to publish in the *Federal Register* concerning this covered merchandise referral. Interested parties that wish to participate in these segments of the proceedings, and receive notice of the final determination, must submit their letters of appearance as discussed below. Further, any party desiring access to business proprietary information in these segments of the proceedings must file an application for access to business proprietary information under administrative protective order (APO), as discussed below.

Finally, we note that covered merchandise referrals constitute a new type of segment of a proceeding at Commerce, and therefore Commerce intends to develop its practice and procedures in this area as it gains more experience.

Scope of the Orders

The merchandise covered by these orders is aluminum common alloy sheet (common alloy sheet), which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of the orders includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core.

Common alloy sheet may be made to ASTM specification B209–14, but can also be made to other specifications. Regardless of specification, however, all common alloy sheet

meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the orders if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of the orders is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H-19, H-41, H-48, or H-391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.3095, 7606.91.6080, 7606.91.6095, 7606.92.3090, 7606.92.3035, 7606.92.6080, and 7606.92.6095. Further, merchandise that falls within the scope of the orders may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3030, 7606.12.3035, 7606.91.3055, 7606.91.3060, 7606.91.6040, 7606.91.6055, 7606.92.3025, 7606.92.3060, 7606.92.6040, 7606.92.6055, and 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance (E&C)'s Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.⁶ An electronically filed document must be received successfully in its entirety by the applicable deadline. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information.⁷ Each submission must be placed on the record of the segment of the proceeding for each order, *i.e.*, for the AD order (A-570-073) and the CVD order (C-570-074).

Letters of Appearance and Administrative Protective Order

Interested parties that wish to participate in these segments of the proceedings and to be added to the public service lists for these segments of the proceedings must file a letter of appearance in accordance with 19 CFR 351.103(d)(1), with one exception: the parties to EAPA investigation 7469 publicly identified by CBP in the covered merchandise referral referenced above (TKA and AA Metals)⁸ are not required to submit a letter of appearance, and will be added to the public service list for these segments of the proceedings by Commerce.

Commerce placed an APO on the record on August 18, 2021,⁹ and established the APO service lists for use in these segments. Commerce intends to place the covered merchandise referral letter on the records of these segments in ACCESS within five days of publication of this notice.

⁶ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011), as amended in *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

⁷ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020); see also *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

⁸ See CBP's EAPA 7496 Letter at 5.

⁹ See Memorandum, "Request for Establishment of Administrative Protective Order: Antidumping and Countervailing Duty Orders on Common Alloy Aluminum Sheet from the People's Republic of China: (A-570-073/C-570-074)," dated August 18, 2021.

Interested parties must submit applications for disclosure under the APO in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to these segments of the proceedings, with one exception: APO applicants representing the parties that have been identified by CBP as an importer in the covered merchandise referral (referenced above) are exempt from the additional filing requirements for importers pursuant to 19 CFR 351.305(d).

Dated: August 18, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

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